IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2364 OF 2005

Municipal Corporation for
the City of Kalyan & Dombivli. .. Petitioner.

vs.

Smt. Sushila S. Pise & Ors. .. Respondents.

Mr. M.S. Kumthekar i/by A.S. Rao
for petitioner.
Mr. M.D. Angal for respondents.

CORAM : S.U. KAMDAR, J.
DATE : 6th December, 2005.

P.C.:

. The present petition is challenging the order dated 9.8.2004 passed on Misc. Application No. 15 of 2002. By the said order the trial Court has rejected the application for condonation of delay of about 250 days in filing the appeal. The appeal is preferred against the final decree passed by the Civil Judge, Junior Division, Kalyan. There is a delay of around 10 months. The petitioner being the Municipal Corporation of the city of Kalyan and Dombivli the ground given is that after

obtaining the certified copy the decision making process has taken some time in filing the appeal and this condonation application has been filed. The impugned order is passed by the trial Court rejecting the application on the ground that no sufficient ground is made out.

2. The learned counsel for the respondents has contended that once an application for certified copy of the order is made beyond the statutory period of limitation of 30 days then in that event the Court has no power to condone the delay under Section 5 of the Limitation Act. In support of the aforesaid contention, he relied upon the judgment of the Division Bench of this Court in the case of Jagdish Krishna Kapur vs. M/s. Vachha and Co. and another, reported in AIR 1979 Bombay 33. I have perused the aforesaid judgment. I do not find any such ratio laid down in the judgment. The judgment was not considering the aforesaid aspect. The only ground that has eben considered by the Division Bench is if the application for certified copy is made beyond time then an appeal filed would be definitely beyond the period of limitation. However, even if the certified copy application is filed beyond the period of 30 days, still whether the person is entitled to condonation of delay under Section 5 of the Limitation Act was not the issue before the Division Bench. However, there are

series of judgments including the judgment of the supreme Court that Section 5 of the Limitation Act must be liberally construed and if the delay is explained satisfactory then the delay should be condoned. In the present case keeping in mind the fact that the petitioner is the Municipal Corporation and that the reason given that the process of taking decision to file appeal has taken some time, in my opinion this is a fit case for condonation of delay. The trial court has erred in refusing to grant condonation. In that view of the matter, the impugned order dated 9.8.2004 is quashed and set aside. The Misc.Application No. 15 of 2002 is granted. The delay in filing the appeal is condoned. The Additional District Judge, Kalyan, is directed to decide the appeal in accordance with law and on its own merits. However, in the light of the fact that the Corporation has taken its own sweet time in filing the appeal, the respondent is required to be compensated by cost. I, therefore, impose costs quantified at Rs. 7,500/- on the petitioner. Costs to be paid to the respondents. Petition is made absolute accordingly.